



Request for City Council Committee Action From the Department of Public Works

Date: May 1, 2012

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Referral: Honorable Betsy A. Hodges, Chair Ways & Means Committee

Subject: **University of Minnesota Trail, Phase III, Authorization to execute a License Agreement with the University of Minnesota.**

Recommendation:

Passage of a resolution authorizing the execution of an agreement with the University of Minnesota regarding the granting of a license and temporary easement, as well as specific requirements regarding the construction, maintenance, and operation of the amended University of Minnesota Trail Project (City Project No. 9847) pending the satisfactory review by the proper City Officers.

Previous Directives:

- Council Action (April 15, 2011) Authorizing the execution of an agreement with the University of Minnesota regarding the granting of temporary easements, licenses, as well as specific requirement regarding the construction, maintenance, and operation of the University of Minnesota Trail Project (City Project No. 9847) pending the satisfactory review by the proper City Officers.
- Council Action (April, 1, 2011) Authorizing Amendment Number 1 of Minnesota Department of Transportation (MnDOT) Agreements Number 92905 and 92693 to include required language regarding the Federal Funding and Transparency Act (FFATA) and increase the estimated cost of reimbursement from Federal Funds.
- Council Action (October 22, 2010) Authorizing the acceptance of additional Non-Motorized Transportation Pilot Program (NTP) funds in the amount of \$98,535 for the University of Minnesota Bike Trail Project (0400-9010943-CBIK06) and the appropriation of this project increased accordingly.
- Council Action (October 8, 2010) As a result of multiple project close outs, excess revenue of \$247,765.52 became available for re-allocation. This entire amount was re-allocated to the University of Minnesota Bike Trail Project, 04100-9010943-CBIK 06 and the appropriation for said project increased accordingly.
- Resolution 2010R –174 (April 16, 2010) Authorizing the execution of an inter-agency agreement with the Minnesota Department of Transportation (MnDOT) for Federal Participation in the Acquisition of Right-of-Way for the University of Minnesota Trail Project (City Project No. 9847) pending satisfactory review by the proper City Officers.
- Resolution 2010R-057 (February 12, 2010) Authorization to record Right-of-Way Plats for the University of Minnesota Trail Project (U of M Trail).
- Council Action (February 12, 2010) Authorizing the proper City officers to negotiate and execute a License and Memorandum of Understanding (MOU) agreement with the University of Minnesota for the trail.
- Council Action (February 12, 2010) Approval of the U of M Trail Project alignment.

- Resolution 2007R-512 (August 8, 2008) Authorizing the execution of two inter-agency agreements with the Minnesota Department of Transportation (MnDOT) for Federal Participation in Design Engineering (Agreement No 92693) and for Federal Participation in Right-of-Way Engineering (Agreement No 92905) for the U of M Trail.
- Council Action (October 5, 2007) Authorizing the proper City officers to accept a Non-Motorized Transportation Pilot Program grant award for the U of M Trail.
- Resolution 2007R-512 (October 5, 2007) Appointing the Commissioner of Transportation as agent of the City of Minneapolis and entering into an agreement to accept grants for the Non-Motorized Transportation Pilot (NTP) Program.
- Council Action (April 13, 2007) Authorization to submit U of M Trail Project for federal (NTP) Project grant.
- Resolution 2004R-580 (December 13, 2004) Project adopted into the 2005-2009 Capital Program.
- Council Action (December 28, 2001) Authorization to acquire property rights from BNSF for the U of M Trail, Phase III.

Prepared by: Paul W. Ogren, P.E., Superintendent of Environmental Engineering, 673-2456

Approved by:

Steven A. Kotke, P.E., City Engineer, Director of Public Works

Presenters: Paul W. Ogren, P.E., Superintendent of Environmental Engineering,
Department of Public Works, Transportation Planning & Engineering Division

Reviews

Permanent Review Committee (PRC):	Approval	NA	Date
Civil Rights Affirmative Action Plan	Approval	NA	Date
Policy Review Group (PRG):	Approval	NA	Date

Financial Impact

None

Community Impact

Neighborhood Notification: Not Applicable

City Goals: The city's infrastructure will be well-maintained, people will feel safe in the city.

Comprehensive Plan: Not Applicable

Zoning Code: Not Applicable

Background/Supporting Information

The University of Minnesota Trail, Phase III was conceived in the mid 1990s. Its original intent was to provide an off-road bicycle and pedestrian trail between downtown Minneapolis and the University of Minnesota's Minneapolis & St. Paul campuses. The City of Minneapolis, after lengthy discussion and negotiations, was unable to obtain the necessary property from the Burlington Northern/Santa Fe Railroad (BNSF) to construct the original plan. The City's amended plan is to provide a shared two-way bike path from the east approach of Bridge #9 over the Mississippi to the approximate intersection of 18th Avenue Southeast and proposed shared facility. A two-way bike path continues from this intersection easterly to the northeast quadrant of 5th Street Southeast and Oak Street Southeast. The project will also provide additional path access at East River Road and a bicycle access at 17th Avenue Southeast and 5th Street Southeast (see project location map).

In 2007, the City of Minneapolis sought and received \$2,500,000 in Non-motorized Transportation Pilot (NTP) program funds for the U of M Trail. The NTP funds are eligible to be used for design engineering, right of way engineering, right of way acquisition and construction costs. On September 24, 2010, the City applied for additional NTP funding. This request was approved by the Transit for Livable Community Board in the amount of \$98,535. Since right of way acquisition is not being pursued, a portion of the NTP funds are in the process of being de-authorized for this project. The fee being charge to the City by the University of Minnesota with regards to this agreement is \$1.00.

Public Works is very close to the completion of the construction plans and specifications for this project, and by this action the securing of an easement, license, construction, maintenance, and operations agreement with the University of Minnesota in the project area. It is the City's intention to commence construction during the 2012 construction season following the execution of all agreements and necessary approvals.

The major aspects of this agreement are:

- City staff and counsel have negotiated this agreement ("Shared Path Agreement") with the University of Minnesota for a proposed non-exclusive, revocable license, temporary easement, and specific requirement with regards to the construction, maintenance, and operations of the University Trail on University-owned property for a 50-year period of time.
- University may terminate the Shared Path Agreement during the first 15 years only in the event of a Default by the City and if the City fails to remedy a Default under the Agreement following 90 days' written notice from the University. Thereafter, the University may terminate the Agreement at any time upon one year's written notice by the University to the City;
- At the City's cost, under the Bike Path Agreement, the City will design and construct a shared storm water facility serving the Paths. The University will permit the storm water facility to drain into the University storm sewer system with no financial contribution by the City toward the cost of repair or maintenance of either the shared storm water facility or previously-existing University-owned storm water conveyance facilities.
- The University will own the shared storm water facility and existing drainage system, and the University will maintain, repair, and replace the entire storm water facility, as well as the entire drainage system, at its cost. In the event of termination or expiration of the Agreement, upon the request of the University, the City will be obliged to remove the Paths and repair any damage to the property caused by the Paths.
- Subject to the limitations of Minnesota Statue 466, this Agreement requires the City to defend, indemnify, and hold the University harmless from claims arising from the use of the Paths or breaches of the Agreement, and to remediate environmental contamination caused by the City or its contractors, or which is encountered by the City in the construction of the Paths.

This proposed Shared Path Agreement has been reviewed by the City Attorney's Office and approved as to form.

Funding:

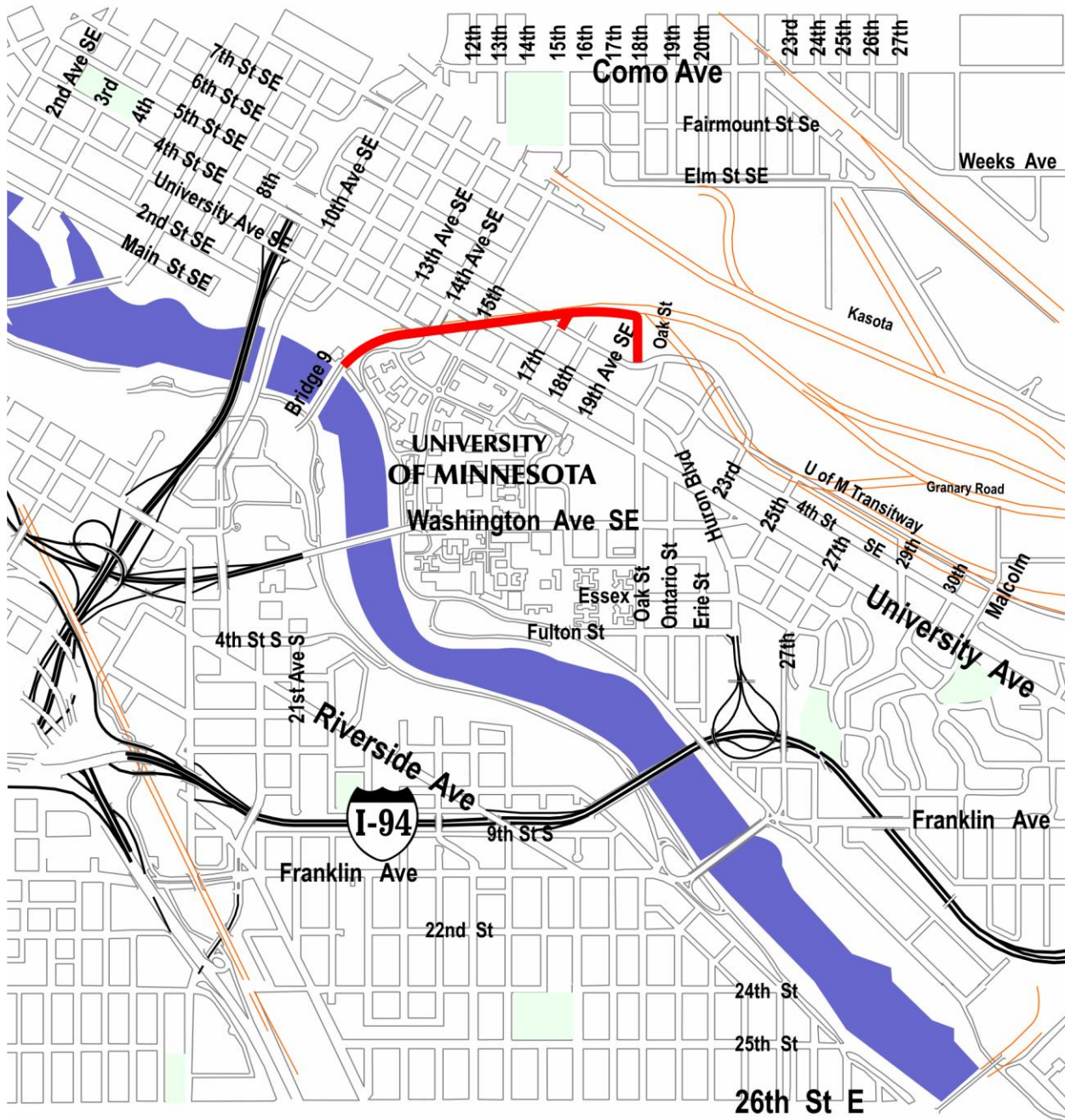
Project funding includes:	2007 Federal NTP grant:	\$	2,500,000
Additional NTP funding provided by this action:		\$	98,535
	Net Debt Bonds:	\$	398,000
	Sewer Revenue:	\$	115,000
Additional Revenue provided by Council Action (October 8, 2010)		\$	247,765.52
<u>Total Project Funding:</u>		\$	<u>3,359,321.52</u>

(Total Project Funding subject to current de-authorization of Right of Way funding)

Attachment: U of M Trail Project Location Map

cc: Council Member Cam Gordon, Ward 2
Heidi Hamilton
Don Elwood

U of M Trail



 Project

RESOLUTION 2012R-____

By Colvin Roy and Hodges

WHEREAS, construction of a shared bicycle path connecting downtown Minneapolis with the Minneapolis campus of the University of Minnesota ("University Trail") is a priority for the City of Minneapolis and its residents;

WHEREAS, the City has previously obtained funding for use in designing and constructing the University Trail, including a 2007 NTP grant in the amount of \$2,500,000 and an additional Federal NTP grant in the amount of \$98,535 in 2010;

WHEREAS, City staff and counsel have negotiated a proposed non-exclusive, revocable license agreement ("Shared Path Agreement") with the University of Minnesota under which the City will be permitted to construct, maintain and operate the University Trail on University-owned property for a 50-year term;

WHEREAS, the University may terminate the Shared Path Agreement during the first 15 years only in the event of a Default by the City and if the City fails to remedy a Default under the Agreement following 90 days' written notice from the University. Thereafter, the University may terminate the Agreement at any time upon one year's written notice by the University to the City;

WHEREAS, the fee being charged to the City by the University for the License is \$1.00;

WHEREAS, at City cost, under the Agreement, the City will design and construct a shared storm water facility serving the University Trail. The University will permit the storm water facility to drain into the University storm sewer system with no financial contribution by the City toward the cost of repair or maintenance of either the shared storm water facility or previously-existing University-owned storm water conveyance facilities. The University will own the shared storm water facility and existing drainage system, and the University will maintain, repair, and replace the entire storm water facility, as well as the existing drainage system at its cost;

WHEREAS, in the event of termination or expiration of the Agreement, upon the request of the University, the City will be obliged to remove the Paths and repair any damage to the property caused by the Trail; and

WHEREAS, subject to the limits of Minn. Stat. Chapter 466, as amended from time to time, and except to the extent caused by University negligence, the Agreement requires the City to defend, indemnify, and hold the University harmless from claims arising from the use of the University Trail or breaches of the Agreement, and to remediate environmental contamination caused by the City or its contractors, or which is encountered by the City in construction of the Trail.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

Upon approval of the proposed Shared Path Agreement by the City Attorney, the City Contracting Officer is authorized to execute the Agreement on behalf of the City and, upon execution and delivery of the Agreement by authorized representatives of the University of Minnesota, the Director of Public Works is authorized to design, construct, operate, repair and maintain the University Trail in accordance with the terms of the Shared Path Agreement.

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